

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JENNIE COURTNEY,
AS ADMINISTRATRIX OF THE
ESTATE OF DENNIS COURTNEY,
DECEASED,

PLAINTIFF,

v.

ANTHONY CLARK, et al.

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CIVIL ACTION NO.:
2:06-CV-00600-MHT
(Removed from the Circuit Court of
Covington County, AL; CV-06-110)

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO AMEND COMPLAINT

COMES NOW the Plaintiff, Jennie Courtney as Administratrix of the Estate of Dennis Courtney, deceased, by and through the undersigned counsel of record, and files this Brief in Support of Motion to Amend Complaint and as reasons in support of states as follows:

BACKGROUND

This is a state law wrongful death and 42 U.S.C. § 1983 case arising from the Death of Dennis Courtney. According to the Complaint, Mr. Courtney was murdered by inmates who escaped from the Covington County jail in March, 2005. Prior to this escape, these inmates escaped from the *same jail* in the *same manner* and committed the *same crime*.

The Complaint brings actions against, among others, Sheriff Anthony Clark and Deputies Jerry Wayne Edgar and Walter Inabinett in their official and personal capacities for their negligent and wanton conduct giving rise to the second escape. Ms. Courtney seeks to amend the Complaint to include a count against Sherrieff Anthony Clark and

Deputies Jerry Wayne Edgar and Walter Inabinett in their personal capacities to state that the Defendants acted willfully and beyond their authority when committing the torts alleged in the Complaint.

ARGUMENT

Fed. R. Civ. P. 15(a) states that "... a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." The Eleventh Circuit has held that, "consistent with Rule 15(a)'s mandate that 'leave shall be freely given when justice so requires,' district courts should generously allow amendments even when the plaintiff does not have the right to amend the complaint." Rosen v. TRW, Inc., 979 F.2d 191, 194 (11th Cir. 1992). A district court may deny a motion to amend for grounds such as undue delay, undue prejudice to the defendants, and futility of the amendment. Muegge v. Heritage Oaks Golf & Country Club, Inc., No. 06-12850, 2006 U.S. App. LEXIS 30858, at *6-7 (11th Cir. 2006).

These grounds have been adopted by courts when specific circumstances warranted their application. For example, in Mont. v. Crow Tribe of Indians, the United States Supreme Court stated that the district court did not abuse its discretion in denying a motion to amend when the case was more than fifteen years old and the motion contained additional causes of action which could change the nature of the litigation. 523 U.S. 696, 708 (U.S. 1998). In Muegge, the Eleventh Circuit stated that a plaintiff waited to long to amend her complaint when the close of discovery was one month from the date of the motion to amend. 2006 U.S. App. LEXIS 30858, at *7. However, the "passage of time, without anything more, is an insufficient reason to deny leave to amend." W.R.

Huff Asset Mgmt. Co. v. Kohlberg, Kravis, Roberts, KKR Assocs. LP, No. 06-11861, 2006 U.S. App. LEXIS 30444, at *10 (11th Cir. 2006).

It is within the discretion of the Court to grant a motion for leave to amend, and “unless a substantial reason exists to deny leave to amend, the discretion of the District Court is not broad enough to permit denial.” Zenith Radio Corp. v. Hazeltine Research, 401 U.S. 321, 330 (U.S. 1971); Shipner v. Eastern Air Lines, Inc., 868 F.2d 401, 407 (11th Cir. 1989); Fla. Evergreen Foliage v. E.I. Dupont De Nemours & Co., 470 F.3d 1036, 1041 (11th Cir. 2006).

In this case Ms. Courtney has not acted with undue delay in seeking to amend her complaint, as the discovery cutoff is more than six months from now. The proposed amendment is based on the same set of circumstances and substantive allegations as the other counts in her Complaint: the Defendants’ negligent and wanton actions leading to the identical escape of the inmates. Defendants Clark, Edgar and Inabinett have prepared for and defended the Complaint, and they will not be prejudiced by the addition of a count which does not change the course of the litigation. Moreover, the amendment is not futile as it is necessary for the special circumstances of this case to quash the qualified immunity defense asserted by the Defendants.

As such, Defendants Clark, Edgar and Inabinett cannot provide substantial grounds for denying Ms. Courtney’s Motion for Leave to Amend her Complaint, and this Honorable Court should embrace the policy of freely and generously allowing the amendment.

WHEREFORE, the Plaintiff by and through the undersigned counsel of record respectfully requests this Honorable Court allow the Plaintiff to Amend her Complaint.

Respectfully submitted,

/s/ Britt V. Bethea

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CERTIFICATE OF SERVICE

I hereby certify that on this the 21st day of February 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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